

PREHEARING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Certification	)	Docket No.
for the Salton Sea Unit 6	)	02-AFC-2
Geothermal Project	)	
_____	)	

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 14, 2003  
10:06 A.M.

Reported by:  
Peter Petty  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Associate Member

HEARING OFFICER, ADVISORS

Garrett Shean, Hearing Officer

Scott Tomashefsky, Advisor

E.V. (Al) Garcia, Advisor

STAFF PRESENT

Paul A. Kramer, Staff Counsel

Robert Worl, Project Manager

PUBLIC ADVISER

Margret Kim

APPLICANT

Michael J. Carroll, Attorney  
Latham and Watkins

Bernard Raemy, Project Development Manager  
Vincent J. Signorotti, Director, Real Estate  
Assets  
CalENERGY Operating Corporation

Paul E. Neil  
RTP Environmental Associates, Inc.

Jerry P. Salamy  
CH2M HILL

EJ Koford  
IEC

INTERVENORS

Tanya A. Gulesserian, Attorney  
Adams, Broadwell, Joseph and Cardozo  
California Unions for Reliable Energy

ALSO PRESENT

Carrie Downey (teleconference)  
Horton, Knox, Carter and Foote  
Imperial Irrigation District

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## P R O C E E D I N G S

10:06 a.m.

ASSOCIATE MEMBER PERNELL: This is a prehearing conference by a Committee of the California Energy Commission on the proposed Salton Sea Geothermal project.

Chairman William Keese is the Presiding Member on the Committee, and he's away on Commission business. My name is Commissioner Robert Pernell; I'm the Associate Member on the Committee, and I will be chairing this Committee hearing today.

To my far right is Scott Tomashefsky; he is Chairman Keese's Advisor. To my immediate left is my Advisor, Mr. Al Garcia. And today's proceedings will be conducted by the Hearing Officer, Mr. Shean.

We also have with us our Public Adviser, Margret Kim, who is present. Margret, raise your hand. And if you'd like to say a few words about the blue cards or --

PUBLIC ADVISER KIM: Good morning. For those of you who are not parties, public members wishing to make any comments, please complete the blue cards which you can find in the entrance or

1 here, and hand them over to me. Thank you.

2 ASSOCIATE MEMBER PERNELL: Thank you,  
3 Ms. Kim. All right, at this time I'll have the  
4 parties introduce themselves for the record  
5 beginning with the applicant. Please introduce  
6 yourself and your team.

7 MR. CARROLL: Good morning; my name is  
8 Mike Carroll with Latham and Watkins on behalf of  
9 the applicant.

10 MR. RAEMY: 'Morning. Bernard Raemy,  
11 Business Development Manager with the applicant.  
12 With us today we've got Paul Neil with RTP, Jerry  
13 Salamy with CH2M HILL, Vince Signorotti with the  
14 applicant also, EJ Koford with IEC.

15 ASSOCIATE COMMITTEE MEMBER PERNELL: All  
16 right, thank you, welcome. Staff.

17 MR. KRAMER: Good morning. I'm Paul  
18 Kramer, Staff Counsel. With me is Bob Worl, the  
19 Project Manager.

20 ASSOCIATE MEMBER PERNELL: Okay.

21 MS. GULESSERIAN: Hi, I'm Tanya  
22 Gulesserian for Intervenor CURE.

23 ASSOCIATE MEMBER PERNELL: Okay. Are  
24 there any other intervenors? Okay. Are there any  
25 agencies, either on the phone or in the audience,

1 represented here today?

2 Hearing none. Is Carrie Downey on the  
3 phone?

4 MS. DOWNEY: I am. I introduced myself  
5 earlier. Carrie Downey with Horton, Knox, Carter  
6 and Foote representing the IID.

7 ASSOCIATE MEMBER PERNELL: Okay. You  
8 weren't on the record, so --

9 MS. DOWNEY: Oh, I apologize; thank you.

10 ASSOCIATE MEMBER PERNELL: Are there any  
11 other agencies represented on the phone?

12 All right, are there any members of the  
13 public that are representing organizations,  
14 associations?

15 Hearing none, at this time I'd like to  
16 turn the hearing over to our Hearing Officer, Mr.  
17 Shean.

18 HEARING OFFICER SHEAN: Thank you,  
19 Commissioner, and good morning to everyone who is  
20 here. Let me indicate that this meeting is being  
21 held and we're going to go through the topics  
22 based on the notice of the prehearing conference,  
23 which was served upon all parties, specifically  
24 the order of topics, appendix A, that appeared in  
25 the notice is what we're going to run through.

1           We have prehearing conference statements  
2       from the applicant and from the staff only, is  
3       that correct?

4           UNIDENTIFIED SPEAKER: That is correct.

5           HEARING OFFICER SHEAN: All right. So,  
6       what I intend to do -- I think what we'll do is  
7       focus first on the topics that the prehearing  
8       conference statements have indicated are going to  
9       be contested, and flesh those out. And it appears  
10      the remainder of the topics are uncontested and  
11      can be taken by declaration.

12          So why don't we start with biology as a  
13      topic. And my understanding is that there is  
14      essentially a dispute with respect to condition  
15      biology-14, related to the preconstruction  
16      surveying for species. If we can just have the --  
17      if I understand further, the applicant has read  
18      and understands the staff's proposed condition,  
19      and has issues with it. Why don't you just  
20      describe what those are and we'll go from there.

21          Mr. Carroll.

22          MR. CARROLL: Thank you. I would say  
23      that there is potentially an issue there, and I'm  
24      not sure that we do fully understand what's  
25      required. And I think perhaps at one point in the



1 process we did, but in the final analysis, in  
2 looking at Biol4 we're not exactly clear on what  
3 it is that the CEC Staff is requesting in the way  
4 of protocol and surveys prior to construction.

5 I'm hopeful that we can resolve -- I'm  
6 hopeful that there's not an underlying substantive  
7 dispute, that perhaps just a matter of insuring  
8 that we do understand what it is that the staff is  
9 asking for and then concluding that that's  
10 acceptable to us.

11 It may be that there is an underlying  
12 substantive dispute, but I'm not absolutely sure  
13 of that as we sit here today. I'm hopeful that  
14 over the next couple of weeks between now and the  
15 evidentiary hearing, perhaps as early as today,  
16 there can be some additional communication between  
17 the CEC biology staff and biologists for the  
18 applicant, which is why we have that individual  
19 here with us today. And we can determine whether,  
20 indeed, there is a dispute there or not.

21 HEARING OFFICER SHEAN: All right. Let  
22 me just indicate, I have biology-14 here in front  
23 of me, and I will tell you from the Committee's  
24 perspective there are some at least format  
25 problems, at a minimum, with this.

1           There is a lot of condition language in  
2     the verification, and that is not where we like to  
3     see that. I mean our general understanding from -  
4     - or my past proceedings is that sometimes the  
5     staff likes to load condition language into the  
6     verification so it can more easily change, through  
7     the CPM, the effect of that language.

8           The Committee and the Commission  
9     generally would like to see condition language in  
10    the condition.

11          As I read this, it was unclear how you  
12    go from baseline surveys for target species and  
13    then would flip over into what I assume is a more  
14    rigorous protocol level survey with respect to any  
15    of these target species; and some of the species  
16    are listed there.

17          So, I think what we'll do is just  
18    reserve the time in the evidentiary hearing for  
19    this. And the parties have identified those  
20    people whom they would like to have testify. But  
21    at this point, before we close the topic, I'll go  
22    to you, Mr. Kramer, and see if the staff has  
23    anything to say.

24          MR. KRAMER: We'll certainly take that  
25    under advisement, and just as you may already

1 know, we are planning on publishing an addendum in  
2 the next couple days which already has some  
3 revisions to Bio14. So we will take your comments  
4 into account, and perhaps revise it further.

5 Just to let the Committee know, we're  
6 still waiting on the biological opinion from the  
7 U.S. Fish and Wildlife Service, which we probably  
8 won't get until the Friday before the Monday  
9 hearing. So we're planning on doing some homework  
10 in that short time. And we may have other  
11 revisions that we need to recommend just to make  
12 sure that our conditions are in line with whatever  
13 the Fish and Wildlife Service ultimately  
14 recommends.

15 One issue of potential concern is at  
16 what point construction can start relative to the  
17 various surveys. We're going to be in contact  
18 with the Service between now and then to try to  
19 resolve that, as well.

20 So we are definitely going to have to  
21 take some time on biology, not necessarily because  
22 things are in contention, but to deal with the  
23 issue you just raised, and also the last-minute  
24 information we're going to receive.

25 HEARING OFFICER SHEAN: Because it

1       became apparent to me in reading this that the  
2       applicant, and it's trying to plan with its  
3       contractors when they are going to show up, is  
4       going to have an issue of knowing whether or not  
5       the baseline survey that they have conducted that  
6       shows the presence and number of species that are  
7       in the affected area, whether or not that then  
8       triggers another survey which takes more time and  
9       leaves contractors and everybody else basically  
10      just standing there waiting for something to  
11      finish.

12                It seems to me, you know, if we can, is  
13      to add a certain element of certainty. Or if we  
14      know, for example, that certain species are  
15      affected at different times of the year, that that  
16      be taken into account.

17                So that you have an initial survey for  
18      the presence and abundance of species in that  
19      season. And then in subsequent seasons deal with  
20      that in another way.

21                MR. KRAMER: Yeah, I think some of the  
22      issues you're talking about would normally be  
23      dealt with in the BRMIMP that would be submitted  
24      before they start construction or mobilization  
25      even. And then, you know, there would be give-

1 and-take during the compliance process.

2 But the fact that some of us are reading  
3 the condition differently, and some of us aren't  
4 sure what it says, suggests that a little more  
5 work is required. And we're glad to do that.

6 HEARING OFFICER SHEAN: Okay. We'll  
7 show it as an item; we'll show it also with the  
8 identified witnesses from --

9 MR. KRAMER: Right, and it goes together  
10 with Bio15, so you might also give some attention  
11 to that, that the two are very much intertwined.

12 HEARING OFFICER SHEAN: I understand.

13 ASSOCIATE MEMBER PERNELL: Mr. Kramer,  
14 you said you had a lot of work to do between now  
15 and the evidentiary hearing. Does that include  
16 having some discussions with the applicant?

17 MR. KRAMER: We're proposing to have an  
18 exchange of information with them, not a formal  
19 workshop, right after this meeting to explain what  
20 we think we mean, and for them to then at least  
21 understand our version -- our interpretation of  
22 the conditions as they've been drafted.

23 ASSOCIATE MEMBER PERNELL: Okay. Sounds  
24 to me like they didn't really understand the  
25 condition, or the Bio14.

1 MR. KRAMER: Well, if --

2 ASSOCIATE MEMBER PERNELL: So if it's a  
3 matter of --

4 MR. KRAMER: There's been several  
5 workshops. So there's been a lot of back-and-  
6 forth. And it's a process that, I guess, isn't  
7 complete. We hoped it would be --

8 ASSOCIATE MEMBER PERNELL: All right, so  
9 this is something that we have to schedule some  
10 time for.

11 MR. KRAMER: At a minimum we're going to  
12 have to talk about the biological opinion and  
13 confirm to you that it is in synch with the  
14 proposed conditions or it isn't. And if it isn't,  
15 then what needs to be changed.

16 So, it'll be one of those unfortunate  
17 exercises where we're all drafting, via the  
18 microphones. And that always seems to take longer  
19 than you'd like it to.

20 ASSOCIATE MEMBER PERNELL: But that  
21 opinion won't be until -- or scheduled to be the  
22 Friday before the Monday hearing, is that what you  
23 said?

24 MR. KRAMER: Correct. And we have no  
25 reason to think it will be delayed, but we're also

1 not optimistic that it's going to show up any  
2 sooner, either.

3 HEARING OFFICER SHEAN: To some degree  
4 on your 14 and 15 you can capture that by saying  
5 that the BRMIMP has to incorporate the terms and  
6 conditions of the federal permit. And that, as a  
7 blanket, addresses what you would currently have  
8 in 14, and potentially 15.

9 Anyway, we'll work on this when we get  
10 there.

11 MR. KRAMER: Yeah.

12 MR. CARROLL: I would just add I think  
13 that's correct, although we're not expecting the  
14 document to be formally issued until just prior to  
15 the hearing. We certainly have a pretty good  
16 sense of what will be in the document.

17 And as the Committee knows, in many  
18 cases the biological opinion comes months after  
19 the Committee decision is final. So, I think the  
20 fact that it's coming out just prior to the  
21 hearings is certainly something we can deal with  
22 in one way or another.

23 HEARING OFFICER SHEAN: At least my  
24 experience in these matters is that federal  
25 agencies are in contact with the applicants as the

1 permit applicant in the federal system. So you  
2 have a pretty good idea of what they're talking  
3 about and thinking about by the time you see it,  
4 or we all see it.

5 Okay, we'll just reserve the time.

6 MR. TOMASHEFSKY: Quick question, Mike.  
7 Based on your last comment is there any concern  
8 that if this document's not available on the 24th  
9 that that's a problem? It sounded as if it's not  
10 based on your opinion.

11 MR. CARROLL: Not from my perspective.

12 MR. TOMASHEFSKY: Okay, is that also --

13 MR. KRAMER: Yeah, and we would simply,  
14 at that point, ask that the record be held open.  
15 We may have to, you know, we may have to recommend  
16 some changes down the road. But we are not  
17 proposing that the hearings would be postponed.

18 HEARING OFFICER SHEAN: All right.  
19 Anything from any other party or person on the  
20 phone?

21 All right, we're going to move off the  
22 topic, then, of biology, and go to air quality.  
23 And there are a couple issues. And since staff  
24 has raised these, why don't you -- they're  
25 essentially staff issues, why don't you introduce



1       them for us after you read your message.

2               MR. KRAMER:   The applicant is  
3       disagreeing on a couple of staff's major,  
4       significant, if you will, conclusions.   That the  
5       air quality environmental impacts from the release  
6       of ammonia during the operation of the plant would  
7       be a significant impact because ammonia is a  
8       precursor to the formation of particulate PM10.

9               And staff has explained its position in  
10      the FSA.   We will have a witness there to further  
11      elucidate that, and to rebut, as necessary, the  
12      applicant's testimony, which we have not seen in  
13      its final form at this point.

14              But I can't imagine at this stage that  
15      we would need to add any additional witnesses.  
16      And I don't anticipate our rebuttal taking any  
17      significant amount of time.   So that's the ammonia  
18      issue.

19              And there is also the release of H2S,  
20      hydrogen sulfide, I think -- my chemistry is so  
21      far down the road --

22              HEARING OFFICER SHEAN:   That's it.

23              MR. KRAMER:   And that's a short-term  
24      impact, but because, in staff's opinion, it  
25      exceeds the California ambient air quality

1 standard, and there are some receptors that would  
2 likely perceive it, it is nonetheless a  
3 significant impact.

4 And it's also a LORS issue because its  
5 release would constitute a nuisance, which is  
6 prohibited under the health and safety code.

7 For both of those impacts staff is  
8 recommending that the Commission adopt overrides.  
9 And we've provided a discussion of the reasons to  
10 override those in the executive summary.

11 So we're not proposing that those stop  
12 the project. It's simply our assessment of the  
13 environmental impacts and the LORS compliance, and  
14 recommending approval anyway.

15 Then the final issue is AQC-13; it's a  
16 condition that requires the applicant to  
17 periodically check to see if there is some other  
18 way to reduce or solve the ammonia problem.  
19 Either, let's say, for instance the area grows  
20 enough that there's a wastewater treatment plant  
21 that can economically supply reclaimed water to  
22 substitute for the water that they're proposing to  
23 derive from the steam, which causes the release of  
24 the ammonia.

25 Then the condition sets a threshold. If

1 the cost would be less than, I believe it's \$500  
2 per ton, then the applicant has to go and  
3 implement that measure. We consider that to be,  
4 at this point it's certainly not any active  
5 mitigation, but the best mitigation we can provide  
6 for the ammonia issue. And feel obligated to  
7 impose that in order to, as CEQA requires us, to  
8 attempt to mitigate the impacts of the project.

9 The applicant disagrees and would prefer  
10 that that condition not be imposed.

11 So I believe that's the extent of our  
12 issues in the air quality area.

13 Of course, the H2S issue also crosses  
14 over into public health, which H2S is kind of a  
15 cross-over emission. And there's a concern that  
16 there could be some short-term public health  
17 impacts from its release, as well. It's basically  
18 the same mechanism. People will smell a high  
19 enough concentration that they may get headaches  
20 and/or become nauseous.

21 But that's only going to occur over a  
22 short time during the commissioning of the  
23 project. Nonetheless, it's significant. But it's  
24 certainly appropriate to override that, as well,  
25 we believe, due to its short-term duration and the

1 benefits that the project would provide.

2 HEARING OFFICER SHEAN: Okay. We can  
3 probably get into this in greater substantive  
4 depth, but does the final determination of  
5 compliance address either of these two matters?

6 MR. KRAMER: The Air District doesn't  
7 regulate ammonia.

8 HEARING OFFICER SHEAN: Well, H2S.

9 MR. KRAMER: Right. Nor do they  
10 regulate ammonia as a precursor to PM10. So they  
11 really didn't get into it. Staff, as part of its  
12 CEQA analysis they conduct, in addition to what  
13 the Air District does, found and attempted to deal  
14 with those issues.

15 HEARING OFFICER SHEAN: Okay, and on the  
16 commissioning, the H2S at the commissioning of the  
17 project? Did they address that?

18 MR. KRAMER: We don't have our air  
19 experts with us, but the District did not -- I  
20 don't believe they had any particular conditions.

21 HEARING OFFICER SHEAN: Okay.

22 MR. KRAMER: But I apologize, I'm not  
23 the best person to get into that detail.

24 HEARING OFFICER SHEAN: All right. No,  
25 I know. It's fairly substantive question. I just

1 thought we'd find out if anybody knew.

2 And let's go now to the applicant and  
3 your side of this.

4 MR. CARROLL: Sure. Let me take the  
5 commissioning first. As Mr. Kramer said, we do  
6 disagree with the staff's conclusion that the  
7 commissioning emissions of H2S result in  
8 significant impact.

9 The modeling shows that the worst case  
10 scenario would be a six-hour period during which  
11 the standards would be exceeded. That assumes  
12 that worst case met conditions would occur during  
13 that 15-day commissioning period. The location of  
14 the maximum impact is in a relatively isolated  
15 area. While I suppose that it's theoretically  
16 possible that a hiker or a refuse worker could be  
17 out there, the impacts don't occur in populated  
18 areas.

19 Our view is that a six-hour exceedance  
20 of a standard over the 30-year life of the project  
21 when all we're talking about are odor impacts, are  
22 not a significant impact.

23 The Air District did address the H2S  
24 commissioning emissions in the final determination  
25 of compliance to the extent that they require the

1 applicant to offset all of its H2S emissions,  
2 including those from ammonia.

3 So the combination of the fact that we  
4 have a very short-term odor impact occurring in an  
5 isolated area, which is being completely offset by  
6 H2S reductions elsewhere in the District led our  
7 technical experts to conclude that that was not a  
8 significant impact.

9 With respect to the ammonia emissions  
10 our view is that although there are ammonia  
11 emissions from the project because the region is  
12 ammonia rich, that the addition of additional  
13 ammonia into the environment is not likely to  
14 result in the reaction that would cause additional  
15 secondary particulate formation.

16 And we think that there is a significant  
17 body of evidence to suggest and support the  
18 conclusion that the area is ammonia rich, and  
19 therefore we would not expect additional secondary  
20 particulate formation.

21 With respect to the condition -- the  
22 third issue really flows from the second issue,  
23 because AQC-13 is a condition that was imposed as  
24 a result of the staff's conclusion that the  
25 ammonia emissions would be a significant impact.

1 I will say that our experts believe in  
2 their positions as I've just articulated them.  
3 Our testimony will be consistent with that. The  
4 testimony will be consistent with the comments  
5 that we made on the FSA, so there won't be  
6 anything dramatically new that the staff has not  
7 seen before. So the testimony from our air  
8 quality experts will be very consistent with the  
9 arguments that we've been making over the course  
10 of the proceedings.

11 Our intent really in presenting our  
12 position is to some extent to give this Committee  
13 options. If the Committee concludes that the  
14 final staff -- in final analysis is going to adopt  
15 the staff's conclusions and approve the project  
16 with overriding considerations, we would not be  
17 opposed to that.

18 So our intent is really to present our  
19 position as we see it. And in a sense, to give  
20 the Committee options because we believe that  
21 there will be sufficient evidence in the record  
22 for the Committee to either adopt the staff  
23 position and approve the project with overriding  
24 considerations, or conclude that these two impacts  
25 are not significant and approve the project on

1       that basis.

2               So, this is not -- it's one that we  
3       believe we're right, but we're not going to fight  
4       to the death on this issue. And our intent is  
5       really to allow the staff to present its position,  
6       allow the applicant to present its position. And  
7       then allow the Committee to conclude whichever  
8       position it believes is correct in the final  
9       decision.

10              HEARING OFFICER SHEAN: All right, thank  
11     you. Ms. Gulesserian, does CURE have a dog in  
12     this not-to-the-death fight?

13              MS. GULESSERIAN: We do not. And I'll  
14     just take this opportunity to thank the staff for  
15     incorporating the mitigation measures that we  
16     jointly proposed to the applicant in this area of  
17     air quality. And there were some other  
18     substantive areas that we came to an agreement on,  
19     and staff has been very helpful in incorporating  
20     those in a way that is acceptable to CURE.

21              So, thank you.

22              HEARING OFFICER SHEAN: All right. Any  
23     other party or person want to speak on this air  
24     quality/public health issue?

25              All right, given that we have witnesses



1 identified by both parties, what we're going to do  
2 is to reserve time under the topics of air quality  
3 and public health for witnesses on this.

4 Let me just ask the question, is there  
5 objection from any of the parties to taking the  
6 FDOC by stipulation so that we don't necessarily  
7 have to call someone from the District to present  
8 it? I think we already have it in our  
9 administrative record. Do we need a District  
10 person?

11 MR. CARROLL: Not from the applicant's  
12 perspective.

13 MR. KRAMER: Nor from staff's.

14 HEARING OFFICER SHEAN: Okay, then I'll  
15 show that we are going to take the FDOC by  
16 stipulation.

17 That leaves us with a host of other  
18 topics that both parties seem to indicate are  
19 uncontested, and therefore would not require a  
20 live witness to be present. And under current  
21 Commission practice we would take these by  
22 declaration for the convenience of the parties and  
23 the Committee.

24 Am I correct in the list that appears as  
25 appendix A of the notice of prehearing conference

1       that all other topics than biology, air quality  
2       and public health are topics which the parties  
3       believe can be taken by declaration?

4               MR. CARROLL: I believe that's correct  
5       with one caveat. If the H2S issue that we talked  
6       about under air quality spills over into the  
7       public health section, because the public health  
8       expert, the CEC Staff has concluded as a result of  
9       the air quality analysis that the short-term  
10      ammonia impacts, because of the odors, are a  
11      short-term public health issue --

12             HEARING OFFICER SHEAN: Right, and I  
13      generally mean that is air quality, slash, public  
14      health there.

15             MR. CARROLL: Yes, right. But we are not  
16      intending to cross-examine -- assuming that we  
17      don't resolve this issue before the hearing we're  
18      not intending to cross-examine the public health  
19      witness. So I think we could, even though there's  
20      some spillover into that topic, take it by  
21      declaration.

22             HEARING OFFICER SHEAN: All right.

23             MR. KRAMER: We may bring our witness.  
24      Once we see their testimony I think we'll know for  
25      sure. But it won't be more than 10 or 15 minutes,

1       so it won't be a big time synch.

2               HEARING OFFICER SHEAN: All right.

3               MR. KRAMER: I do have one question.

4               HEARING OFFICER SHEAN: Yes.

5               MR. KRAMER: On the issue of the  
6       evidence justifying the overrides, we provided  
7       that in the executive summary. I guess in normal  
8       cases the executive summary isn't admitted into  
9       evidence. But I think in this case it would be  
10      appropriate.

11              If the Committee desires additional  
12      testimony on that we'd like to know. We're not  
13      necessarily planning to provide any more, but --

14              HEARING OFFICER SHEAN: Okay, without  
15      showing a hand, because we have no hand to show,  
16      and I have read the executive summary. I don't  
17      believe that it's necessary that you present  
18      anything in addition to that.

19              In large measure the executive summary  
20      summarizes material that's already in other  
21      portions of the record, or in your staff's final  
22      assessment. But to the extent that it sort of  
23      recapitulates it in one spot, it has some value,  
24      should our record ever be examined by anybody  
25      else.

1           So I have no problem with the executive  
2       summary being presumably sponsored by Mr. Worl, or  
3       whomever you would like, coming into the record as  
4       a piece of evidence.

5           MR. KRAMER: Thank you, because I do  
6       think there are one or two new factoids in it.  
7       Not a lot, but a couple.

8           HEARING OFFICER SHEAN: All right. So  
9       long as you're not going to make me dig through it  
10      to find out what those are --

11           (Laughter.)

12          MR. KRAMER: I assume you'll start  
13      there.

14          HEARING OFFICER SHEAN: All right.

15          MR. CARROLL: One additional caveat.  
16      There was some discussion on a continuation of an  
17      FSA workshop that was held last week regarding  
18      Visual-1 related to the need to have in-kind  
19      replacement for any vegetation that had been lost.  
20      And staff was going to take under advisement a  
21      request from the applicant that the in-kind  
22      language be removed if what had been taken out was  
23      not a native species. That it didn't make sense  
24      to replace it in-kind; that it could be replaced  
25      with something that was biologically appropriate.

1           This is a minor issue, but as long as  
2       we're going through the list I thought I'd raise  
3       that. I don't know if the staff --

4           MR. KRAMER: In our addendum we're  
5       proposing to remove that language.

6           MR. CARROLL: Okay.

7           HEARING OFFICER SHEAN: Fine. And let  
8       me just indicate for the attorneys, because  
9       they're the only ones to whom such a thing might  
10      conceivably matter, it is that the evidentiary  
11      hearing, in my opinion, is basically for disputes  
12      of fact. So if we end up with disputes over the  
13      language that's in the conditions, since the  
14      conditions are ultimately entirely within the  
15      province of the Commission, it's essentially  
16      argument.

17           And if we need, as we apparently do, on  
18      biology and maybe air quality, an evidentiary  
19      basis in which the Commission can conclude what it  
20      is going to have as a condition, that's an  
21      appropriate thing to have witnesses for.

22           But merely to discuss changes in  
23      language or arguments as to why one portion of a  
24      condition should or shouldn't be in is essentially  
25      not an evidentiary matter, and one which we don't

1 want to elevate to more importance than it  
2 deserves. We keep it at the level of importance  
3 that it does deserve.

4 So, with that, I'm going to indicate  
5 that all other topics than biology, air quality  
6 and public health, are going to be submitted by  
7 declaration and the FDOC submitted by stipulation.

8 MR. GARCIA: Yeah, I'd like to --

9 ASSOCIATE MEMBER PERNELL: State your  
10 name for the record, please.

11 MR. GARCIA: Al Garcia, Commissioner  
12 Pernell's Advisor.

13 I'd like to have witnesses from the  
14 applicant as well as the staff available on  
15 hazardous material and fire safety at the hearing.

16 And I may also have some questions on  
17 environmental justice.

18 MR. KRAMER: Could we make those  
19 witnesses available by telephone?

20 MR. GARCIA: That would be fine with me.

21 HEARING OFFICER SHEAN: That was my next  
22 question. Apparently you wanted to have, based  
23 upon comments that I saw, one or more of your  
24 witnesses made available by phone, as opposed to  
25 physically present.

1 MR. KRAMER: Right. It wouldn't be on  
2 the three topics we're expecting hearings on, but,  
3 for instance, to answer Mr. Garcia's questions.

4 We're trying to get real cheap lately  
5 and it would help us a lot --

6 HEARING OFFICER SHEAN: Oh, I  
7 understand. Okay. But you were going to have  
8 live witnesses for bio, air quality and -- is that  
9 correct?

10 MR. KRAMER: And public health, --

11 HEARING OFFICER SHEAN: Public health.

12 MR. KRAMER: Perhaps, yes.

13 HEARING OFFICER SHEAN: Okay.

14 MR. KRAMER: Unless we submit the public  
15 health by declaration.

16 HEARING OFFICER SHEAN: All right.

17 MR. CARROLL: Applicant is wanting to  
18 make those witnesses available by phone, as well.  
19 We'd also be willing, there are particular  
20 questions that are pending, to try to address  
21 those in the declarations that are submitted. If  
22 there's an interest in providing those questions  
23 in advance, we can try to address them in  
24 declarations.

25 HEARING OFFICER SHEAN: Okay.

1           MR. KRAMER: I was starting to write  
2 down that list. That was hazmat --

3           MR. WORL: -- worker safety and fire  
4 protection. And I think Al indicated  
5 environmental justice, as well.

6           ASSOCIATE MEMBER PERNELL: Can we go off  
7 the record for a minute, please.

8           (Off the record.)

9           ASSOCIATE MEMBER PERNELL: Mr. Shean.

10          HEARING OFFICER SHEAN: All right. I  
11 think what we're going to do is to ask Mr. Garcia  
12 if he can't formulate some of his questions into a  
13 writing to the parties so that you will have  
14 something in advance to deal with.

15          And if you would like to attempt to  
16 answer them, given that we've used email as a  
17 means to do a lot of our communication here, it  
18 may well be that the questions can be posed and  
19 answered prior to the 27th in a manner that will  
20 make it so that it's not necessary that anybody  
21 appear or if we know, I guess we're going to crank  
22 up a teleconference to assure that witnesses that  
23 might come and address issues that are in this  
24 fire, safety and hazardous materials area can be  
25 available by telephone. And flesh out their



1       answers.

2               MR. KRAMER:   And I think that's  
3       especially helpful with regard to environmental  
4       justice because it crosses over so many areas.  We  
5       don't really have one EJ expert, as such.  We have  
6       individual analysts looking at those issues in  
7       their areas.

8               HEARING OFFICER SHEAN:  All right.  So,  
9       we'll do that; and then Mr. Garcia will get that  
10      either to you directly or through me as quickly as  
11      is reasonable.

12              I think we had announced in this notice  
13      of the prehearing conference that we were going to  
14      be starting the evidentiary hearing at 2:00.  I  
15      think given the topics that we have here, we'll  
16      back it up an hour and commence at 1:00.  That  
17      will give everyone from northern California a  
18      chance to get to San Diego, then on the road, and  
19      to El Centro.

20              And we will also have teleconferencing  
21      capability.  And with that, it appears, at least  
22      the Committee is satisfied that we've captured the  
23      topics that we will be addressing at the  
24      evidentiary hearing.

25              So, is there anything from any other

1 party or person who is here, or on the phone, that  
2 you think we need to take into account at these  
3 evidentiary hearings?

4 Mr. Kramer.

5 MR. KRAMER: Simple exhibit lists, can  
6 we be letters as opposed to numbers?

7 HEARING OFFICER SHEAN: Exhibit lists.  
8 Generally disfavored. Okay. If you've already  
9 submitted it to the record, just identify it from  
10 whatever it is. So if, for example, you're in --  
11 like let me, a good example would be for the  
12 applicant. If you're going to incorporate into a  
13 declaration on land use, not only the AFC, but  
14 portions or all of your data responses, then just  
15 say AFC section so-and-so and data responses 6,  
16 19, 25 and 130. And that should do it.

17 I don't think we need any separate  
18 exhibits. It's easier for you; it's easier for  
19 us. And particularly in this area where so much  
20 of it is uncontested.

21 Now, if you have a particular exhibit  
22 you're going to use in a contested area, just  
23 bring it along and we'll identify it as necessary  
24 at the time.

25 MR. KRAMER: Okay. That's even easier.

1 HEARING OFFICER SHEAN: Yeah, let's just  
2 keep it simple.

3 ASSOCIATE MEMBER PERNELL: It would be  
4 my preference to get this done on the 27th. So  
5 that I think, as a matter of scheduling, if we can  
6 get it done, and I'm prepared to, as some of you  
7 know, sit there till 3:00 in the morning till we  
8 get it done. So I'm just letting you know to be  
9 prepared. We'll start at 1:00 and we'll continue  
10 until we're done.

11 HEARING OFFICER SHEAN: And my  
12 expectation is that that will be before 6:00.

13 (Laughter.)

14 HEARING OFFICER SHEAN: We will run this  
15 so that -- with a break and some food and some  
16 potty breaks, we will most likely get this thing  
17 done by 6:00. And that also affords us an  
18 opportunity to have a public comment period for  
19 any of the local residents or agencies or others  
20 who are concerned about the project.

21 Now, given Commission regulations for us  
22 to conduct this on the 27th, we have to back it up  
23 ten days for the service of testimony. I know  
24 that to a large extent at least the applicant has  
25 formulated its testimony in its comments on the

1 FSA. Is there going to be a problem in having any  
2 of your testimony on the topics of biology and air  
3 quality/public health served by Friday?

4 MR. CARROLL: No.

5 HEARING OFFICER SHEAN: No, okay. Well,  
6 that would be the order of the Committee then in  
7 order to meet our deadline by regulation as filed  
8 and served on Friday -- or on the 17th, which I  
9 think is Friday.

10 MR. CARROLL: And that would include the  
11 declarations in the uncontested areas, as well?

12 HEARING OFFICER SHEAN: Yes.

13 MR. CARROLL: Okay.

14 HEARING OFFICER SHEAN: Obviously  
15 substantively that's far less important, but so if  
16 there's a problem with that, I will indicate to  
17 you now that if you call me on Friday and say  
18 there's a problem with that, we'll give you till  
19 Monday.

20 MR. CARROLL: We don't foresee any  
21 problem filing --

22 HEARING OFFICER SHEAN: Okay.

23 MR. CARROLL: -- everything by Friday.

24 HEARING OFFICER SHEAN: All right.

25 Well, I have pretty much a prepared notice of

1       evidentiary hearing that will recap all that we've  
2       discussed here; the change in time; the date for  
3       filing of the testimony; and the topics that are  
4       contested and the topics that the Committee has  
5       requested witnesses be available for questioning  
6       on.

7               And I just want to check again, I guess  
8       it was Mr. Signorotti had made arrangements for  
9       the room. And that we do have them, and that they  
10      are going to be at the Imperial Irrigation  
11      District Headquarters there in El Centro.

12             MR. SIGNOROTTI: Yes, that's correct.  
13      We have the room reserved and we actually have a  
14      smaller conference room --

15             ASSOCIATE MEMBER PERNELL: Could you  
16      step up to the mike, please, and just state your  
17      name so that if the room is not available we'll  
18      know who to call.

19             (Laughter.)

20             MR. SIGNOROTTI: Vince Signorotti with  
21      the applicant. And to respond to Mr. Shean's  
22      comments, yes, we do have the IID Auditorium  
23      reserved both Monday and Tuesday. Tuesday, if it  
24      does spill over into Tuesday, we have a smaller  
25      meeting room, roughly the size of this conference

1 room available.

2 HEARING OFFICER SHEAN: Highly unlikely.

3 MR. SIGNOROTTI: But for the Monday  
4 meeting --

5 HEARING OFFICER SHEAN: I do have a  
6 favor to ask of you. Did you check to see whether  
7 the room that we would be using does have  
8 capability to have teleconferencing capability?

9 MR. SIGNOROTTI: It does. I have and it  
10 does.

11 HEARING OFFICER SHEAN: Okay. Can we  
12 ask you to, since you're down there and may or may  
13 not have the gear to set that up, --

14 MR. SIGNOROTTI: Yes.

15 HEARING OFFICER SHEAN: -- or at least  
16 the physical gear, and we'll get the phone number  
17 and that kind of thing lined up with our  
18 contractor.

19 MR. SIGNOROTTI: Absolutely.

20 HEARING OFFICER SHEAN: Appreciate that  
21 very much, thank you.

22 ASSOCIATE MEMBER PERNELL: Thank you.

23 HEARING OFFICER SHEAN: And again, thank  
24 you for helping us get the facility for the  
25 hearing.

1 All right, is there anything else that  
2 anyone needs to bring to the Committee's attention  
3 with regard to the evidentiary hearing or any  
4 other matter?

5 MR. CARROLL: We would like to discuss,  
6 and perhaps you're getting to this, the sequence  
7 of events following the evidentiary hearing. Mr.  
8 Kramer, in his prehearing conference statement,  
9 had requested a three-week period for filing  
10 briefs following the evidentiary hearing.

11 We are very interested in seeing this  
12 project come before the full Commission before the  
13 end of the year. As we look at the Commission's  
14 calendar, December 17th appears to be the last  
15 regularly scheduled Commission meeting. So we are  
16 working back from that date and are hopeful that  
17 we can meet that date. We believe that we can.

18 I think a three-week briefing period  
19 would throw a wrench into that schedule. From our  
20 perspective frankly we're not sure that we need  
21 briefs at all. I think that with respect to the  
22 outstanding air quality issues the staff has laid  
23 out their position very clearly in the FSA. Our  
24 position will be laid out very clearly in our  
25 testimony. By the end of the evidentiary hearing

1       this Committee will understand what the positions  
2       of the staff and the applicant are.

3               With respect to biology we will either  
4       resolve that issue between now and then, or it  
5       will be a similar, clear-cut situation.

6               So I'm not sure that there are going to  
7       be any issues on which briefing would assist the  
8       Committee in issuing a PMPD. So, we would request  
9       that there not be briefing or that it be on a very  
10      expedited schedule in order to allow us to get  
11      before the Commission before the end of the year  
12      with a final decision.

13              MR. KRAMER: I'm not sure that's  
14      physically possible, because there's a 30-day  
15      public review period on the PMPD. So the PMPD  
16      would have to be released before the middle of  
17      November, which is two weeks after the hearings,  
18      about the time the transcript might come out.

19              So, I'm just not sure that's realistic.  
20      It's probably more realistic for the Commission to  
21      schedule another meeting later in December, or  
22      maybe early January is the best it can do.

23              We don't load up our FSAs with lots of  
24      legal argument, so I don't know that I -- I never  
25      write a lot. I try to be concise. But, I expect



1       there's going to be something I'm going to need to  
2       say in the form of a brief. And I would not be  
3       willing to give that up today.

4               HEARING OFFICER SHEAN: And I think the  
5       Committee's general view is we don't know enough  
6       today to know what we should recommend. I think  
7       we now understand the applicant's interest with  
8       respect to the timing. And rather than try to  
9       state specifically at this particular point what  
10      we're going to do, we'll know a whole heck of a  
11      lot more once we've gaveled the witnesses' portion  
12      of our hearing to a close. And we can go from  
13      there to indicate what we need to do.

14             So, to the extent that any of the  
15      materials that you can anticipate you'd need in a  
16      brief can be either done in advance, that's fine.  
17      Or we just wait until we see what we got and go  
18      from there. And I think that's likely what the  
19      Committee is going to do, is just wait and see.  
20      We'll have our arms around exactly how contentious  
21      this is, exactly what the issues are, and have a  
22      much better sense of what needs to be briefed, if  
23      at all.

24             All right, with that we're about to  
25      gavel this thing to a close. Is there anything

1       anybody would like to say?

2               Is there a member of the audience who  
3       has public comment?

4               All right, then. We'd like to welcome  
5       Ms. Kim as our new Public Adviser. This is her  
6       first Commission proceedings she's attended that  
7       relates to the siting process.

8               And thank you all for having come up  
9       from southern California, we appreciate it. And  
10      we will see you on the 27th in El Centro. Thanks  
11      very much.

12              We're adjourned.

13              (Whereupon, at 10:50 a.m., the  
14      prehearing conference was adjourned.)

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## CERTIFICATE OF REPORTER

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